

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Rulemaking for the Purpose of Revising Certain
Rules of Practice and Procedure to Implement
Public Utilities Code § 1708.5 (Petition for
Rulemaking.)

Rulemaking _____

**ORDER INSTITUTING RULEMAKING TO
IMPLEMENT PUBLIC UTILITIES CODE SECTION 1708.5****Summary**

The California Public Utilities Commission (Commission) in this rulemaking proposes an amendment to the Commission's Rules of Practice and Procedure¹ (Title 20, Division 1, Chapter 1 of the California Code of Regulations).

The proposed amendment implements Public Utilities Code Section 1708.5,² which allows any person to petition the Commission to initiate a rulemaking. Appendix A lists the proposed amendment, which we will also publish in the California Regulatory Notice Register. We will accept comments and reply comments on the proposed amendment.

¹ Unless otherwise specified, all section citations are to the Public Utilities Code, and all rule citations are to the Commission's Rules of Practice and Procedure.

² Assembly Bill (AB) 301 (Wright), added by Stats. 1999, Ch. 568, Sec. 2. Effective January 1, 2000.

I. Petition for Rulemaking

We propose adding to Article 3.5 (which addresses rulemaking in general) a new Rule 14.7 to establish specific procedures for handling a petition to adopt, amend or repeal a regulation under Pub. Util. Code § 1708.5. The proposed rule allows the public to suggest new or revised regulatory policies to the Commission, but does not apply to proposed changes to the Commission Rules of Practice and Procedure (Rules).³ We believe that the legislative intent behind the adoption of Pub. Util. Code § 1708.5 was to permit regulated utilities and the public to petition the Commission to adopt, amend or repeal substantive regulations of the Commission.

Additionally, the proposed rule defines “regulation” for purposes of filing a petition. Consistent with § 1708.5, a petition must request that the Commission adopt a regulation that has general applicability and future effect. A regulation is generally applicable where it applies to an entire class of entities or activities over which the Commission has jurisdiction. A regulation has future effect when it applies to conduct in the future.

Consistent with the intent of § 1708.5, as set forth in uncodified § 1 of AB 301, the proposed rule does not restrict standing to file a petition for rulemaking. To ensure that potentially affected persons have notice of the petition, the proposed rule requires service of the petition broadly. The

³ The uncodified declarations of Legislative intent in AB 301 (Section 1, Stats. 1999, c.1) state that the Legislature did not intend Pub. Util. Code § 1708.5 to apply to all Commission decisions and orders, and that the Commission has authority to define the term “regulation” more precisely to implement this Rule. The uncodified declarations of legislative intent also provide that the Commission may delegate authority to its staff to deny rulemaking petitions, in order to administer Pub. Util. Code § 1708.5 efficiently.

petitioner, our Public Advisor, and the assigned Administrative Law Judge may use existing Commission service lists and other means to identify “interested parties.” We also promote effective notice by requiring petitions to include concise justification and specific proposed wording for the regulation.

In light of our existing rules for review of Commission decisions, we will not entertain petitions for rulemaking on issues that we have addressed in the previous year.

The proposed rule does not restrict ex parte communications or reporting requirements for such communications in the context of a petition for rulemaking. Historically, we have not imposed restrictions on ex parte communications or any reporting requirements in rulemaking proceedings, and we see no reason to impose such restrictions or requirements on requests for rulemakings. (See Articles 1.5 and 2.5 of the Rules of Practice and Procedure.)

II. Prior Commission Experience Under Section 1708.5

Section 1708.5(e) directs us to implement the statute initially using our Rules of Practice and Procedure in effect January 1, 2000, which is also the effective date of AB 301. The same section also directs the Commission to amend its rules on or before July 1, 2001, to provide more specific procedures for handling a petition for rulemaking.

Accordingly, we delayed this implementation rulemaking so that we could gain experience with handling this kind of petition, and use the experience to guide our implementing rules. Until recently, however, we saw few petitions for rulemaking. The only such petition that we handled before July 1, 2001, basically sought relief in a private dispute between a charter-party carrier and competing carriers. We rejected that petition because it did not seek a “regulation” (i.e., a

rule of general applicability and future effect) under § 1708.5, but was in fact adjudicatory in nature. (See Decision 00-07-035 in Petition (P.) 00-02-018.) Subsequently, we have had several such petitions, however, and our implementing rules respond to the generic problems we have observed in handling these petitions.⁴

III. Publication of the Proposed Rule in the California Regulatory Notice Register

We authorize the Chief Administrative Law Judge to take all steps necessary, including preparation of a Notice of Proposed Regulatory Action (Notice), to publish the proposed rule in the California Regulatory Notice Register, which should occur within 15 days of the effective date of this order. This publication would start the 45-day notice-and-comment process, which is the first stage leading to adoption and codification (in the California Code of Regulations) of these rules.

IV. Scoping

As required by Rule 6(c)(2), we preliminarily determine that this proceeding should be categorized as quasi-legislative. No hearing is contemplated. However, interested persons may file and serve a written request for a public hearing by no later than 15 days before the close of the public comment period (30 days after publication of the Notice in the California Regulatory Notice Bulletin). A workshop may be held. Consequently, Article 2.5 of our Rules will apply only to the extent indicated in Rule 6.6. The issues for

⁴ Five petitions have been filed up to the date of issuance of this Order Instituting Rulemaking. In addition to P.00-02-018, one petition was withdrawn by the petitioner; the other three petitions are pending.

this proceeding consist of adopting procedures to implement § 1708.5. We project final adoption and submission of the new rule to the Office of Administrative Law within three months of the publication of the proposed rule in the California Regulatory Notice Register; however, in no event will the time to finally resolve this proceeding exceed 18 months from the effective date of today's decision.

A tentative schedule for this proceeding is as follows:⁵

Required Action	Date (Tentative)
Commission adoption of OIR	June 27, 2002
Publication of Notice and Proposed Rule change in California Regulatory Notice Register	July 12, 2002
Last day for interested persons to request a public hearing in writing	August 12, 2002
Last day for filing comments	August 26, 2002
Last day for filing reply comments	September 10, 2002
Commission approval of decision adopting proposed rule change	Fall 2002/Early Winter 2003

Finding of Fact

The proposed rule attached to this Order Instituting Rulemaking as Appendix A would appropriately revise the Commission's Rules of Practice and Procedure to implement Pub. Util. Code § 1708.5.

⁵ The schedule for this proceeding will be affected by the date of publication of the Notice in the California Regulatory Notice Bulletin. We shall notify interested persons if the schedule changes.

Conclusions of Law

1. The proposed rule should be published in the California Regulatory Notice Register.
2. The proposed rule should be served on interested persons with an invitation for comments and replies and notice of the opportunity to request a hearing. In order to begin this process promptly, this order should be effective immediately.

O R D E R

IT IS ORDERED that:

1. The Chief Administrative Law Judge is authorized and directed to take expeditiously all procedural steps necessary under the Administrative Procedures Act for the Commission to adopt a rule implementing § 1708.5, including but not limited to submission of the Notice of Proposed Rulemaking (Notice) to the Office of Administrative Law for publication in the California Regulatory Notice Register.
2. This Order Instituting Rulemaking shall be served initially on a modified service list drawn from Rulemaking (R.) 99-11-021. The initial service list is attached to this order. Any party to R.99-11-021, and any other interested person, may request inclusion in the service list for this rulemaking by contacting the Commission's Process Office (alj_process@cpuc.ca.gov) within 20 days of the date of this order. The updated service list will be available at the Commission's Internet site (www.cpus.ca.gov).
3. Any written requests for a hearing must be filed and served no later than 15 days before the close of the comment period.

4. Comments must be filed and served no later than 45 days after publication of the Notice.

5. Replies must be filed and served no later than 60 days after publication of the Notice.

This order is effective today.

Dated _____, at San Francisco, California.

APPENDIX A**14.7. (Rule 14.7) Petition for Rulemaking**

(a) Pursuant to this rule, any person may petition the Commission under Public Utilities Code Section 1708.5 to adopt, amend, or repeal a regulation. The proposed regulation must apply to an entire class of entities or activities over which the Commission has jurisdiction and must apply to future conduct. This rule does not authorize petitions to adopt, amend, or repeal Commission Rules of Practice and Procedure.

(b) Definitions. For purposes of this rule, (1) “industry division” means a division (or its successor, as designated by the Commission) whose function is to advise and otherwise assist the Commission in regulating a particular utility industry; and (2) “interested parties” means those persons on service lists identified by the Public Advisor’s Office and other persons who have an economic or other interest sufficient to warrant participation in a particular petition.

(c) Form and Content. A petition must concisely state the justification for the requested relief, and if adoption or amendment of a regulation is sought, the petition must include specific proposed wording for that regulation. A petition that contains factual assertions must be verified. Unverified factual assertions will be given only the weight of argument. Petitions must comply with all applicable requirements of Article 2 (Filing of Documents) of the Commission’s Rules of Practice and Procedure, and the caption of a petition must contain the following wording: “Petition to adopt, amend, or repeal a regulation pursuant to Pub. Util. Code § 1708.5.”

(d) Service and Filing. Petitions must be served upon the Executive Director, Chief Administrative Law Judge, Director of the appropriate industry division, Public Advisor and all known interested parties. Parties filing petitions must consult with the Public Advisor to identify a service list to be used to give persons generally interested on Commission rulemakings notice of the petition. If a petition would result in the modification of a regulation adopted in a past Commission order or decision, then the petition must also be served on all parties to the proceeding or proceedings in which the regulation that would be modified was adopted. The assigned Administrative Law Judge may direct the

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petitioner to serve the petition on additional persons.

(e) Responses and Replies. Responses to a petition must be filed and served on all parties who were served with the petition within 30 days of the date that the petition was served, unless the assigned Administrative Law Judge sets a different date. The petitioner and any other party may reply to responses to the petition. Replies must be filed and served within 10 days of the last day for filing responses, unless the Administrative Law Judge sets a different date.

(f) The Commission's rules restricting ex parte communications and imposing reporting requirements do not apply to petitions for rulemaking.

(g) The Commission will not entertain a petition for rulemaking on an issue that the Commission has acted on or decided not to act on within the preceding 12 months.

Note: Authority Cited: Sections 1701 and 1708.5, Public Utilities Code.
Reference: Section 1708.5, Public Utilities Code.

(END OF APPENDIX A)